85-1589

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

IOWA MUTUAL INSURANCE COMPANY,

a corporation,

Petitioner,

vs.

EDWARD M. LaPLANTE, VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN and WELLMAN RANCH COMPANY, a dissolved Montana corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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320 First National Bank Building
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QUESTION PRESENTED

Whether a federal district court has diversity jurisdiction over an action prosecuted by a citizen of one state against reservation Indians located in another state.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Iowa Mututal Insurance Company (Iowa Mutual) hereby respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the United States District Court for the District of Montana in this matter, entered on September 21, 1984, is reproduced on pages 1-2 of Petitioner's Appendix. The unpublished opinion of the United States Court of Appeals affirming the District

Court's judgment, dated September 24, 1985, is reproduced at pages 3-6 of Petitioner's Appendix. The subsequent order of the Court of Appeals, dated December 27, 1985, denying Iowa Mutual's Petition for Rehearing and suggestion for rehearing en banc appears at page 6 of Petitioner's Appendix.

JURISDICTION

The order of the Court of Appeals denying Iowa Mutual's Petition for Rehearing was entered on December 27, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1); Petitioner's application is timely pursuant to 28 U.S.C. Sec. 2101 (c), as extended by Rule 20.4 of the Rules of this Court.

STATUTES, TREATIES AND OTHER LAWS INVOLVED

The issue in the present case concerns federal diversity jurisdiction under 28 U.S.C. Sec. 1332, as the same may be affected by the jurisdiction of tribal courts, whose jurisdiction has been determined in turn as a matter of federal common law, chiefly by means of pronouncements from this Court itself.

STATEMENT OF THE CASE

Iowa Mutual Insurance Company is an Iowa corporation with its principal place of business in DeWitt, Iowa. In April, 1982, Iowa Mutual issued a package of insurance policies to the Wellman Ranch. The package included automobile and farm and ranch property and liability insurance policies. As part of the package, personal umbrella policies were also issued to Ramona Wellman, and her three sons Robert Wellman, Jr., Craig Wellman and Terry Wellman, all principals in the Wellman Ranch business. The Wellman Ranch is located within the exterior boundaries of the Blackfeet Indian Reservation, in Montana. Ramona Wellman, Robert Wellman, Jr., Craig Wellman and Terry Wellman are enrolled members of the Blackfeet Indian Tribe. The Wellmans travelled off the Reservation, to an independent insurance agent in Choteau, Montana, to apply for this insurance package.

On May 3, 1982, Edward M. LaPlante, who was then an employee of the Wellmans and in fact the son-in-law of Ramona Wellman and the brother-in-law of Robert Wellman, Jr., Craig Wellman and Terry Wellman, was injured in a single vehicle accident while driving a cattle truck in the course and scope of his employment. The accident occurred on U.S. Highway 89 within the exterior boundaries of the Blackfeet Indian Reservation. Significantly, the Wellmans did not provide Workers' Compensation insurance for their employees.

In May, 1983, Edward M. LaPlante and his wife, Verla LaPlante, filed a personal injury action against the Wellmans in Blackfeet Tribal Court. The LaPlantes, like the Wellmans, are enrolled members of the Blackfeet Tribe. Joined as Defendants with the Wellmans were Iowa Mutual Insurance Company and Midland Claims Service, a Montana adjusting firm employed by Iowa Mutual to investigate Edward LaPlante's claims. The LaPlantes sought compensatory damages from the Wellmans based upon Edward LaPlante's personal injuries and Verla LaPlante's loss of consortium. They sought compensatory and punitive damages from Iowa Mutual Insurance Company and Midland Claims Service, based upon those firms' alleged bad faith adjusting of LaPlante's personal injury claims. The Tribal Court proceedings are still pending. Both Iowa Mutual and Midland Claims Service have tried, so far unsuccessfully, to have the Tribal Court proceedings dismissed against themselves, on the basis that the Tribal Court lacks jurisdiction over them. None of the LaPlante's claims against any of the Defendants in the Tribal Court proceeding have been resolved, either by the Tribal Court, or by means of settlement between the parties themselves.

On May 22, 1984, Iowa Mutual initiated the federal litigation for which review is now sought from this Court. Iowa Mutual filed a declaratory judgment action under 28 U.S.C. Sec. 2201 against the Wellmans and LaPlantes, seeking a

determination from the Federal District Court that the LaPlante's claims against the Wellmans were excluded from the scope of coverage in any of Iowa Mutual's insurance policies issued to the Wellmans, such that Iowa Mutual was relieved of any obligation to either defend or indemnify the Wellmans for LaPlante's claims. Jurisdiction was predicated on diversity under 28 U.S.C. Sec. 1332. Iowa Mutual is an Iowa corporation; the Wellmans and LaPlantes are all Montana citizens.

While both the Wellmans and LaPlantes appeared in the declaratory judgment proceeding, the LaPlantes specifically moved to dismiss the case, on the basis of a Ninth Circuit Court of Appeals existing precedent, R.J. Williams Company vs. Fort Belknap Housing Authority, 719 F. 2d 979 (9th Cir. 1983), *cert. den.*, 105 S. Ct. 3476 (1985). In *R.J. Williams*, the Ninth Circuit determined that no federal diversity jurisdiction would exist for a claim against a reservation Indian, if the courts of the state in which the reservation was located would not have jurisdiction. A non-Indian litigant would first be required to apply to the tribal court to determine whether that tribunal felt itself possessed with jurisdiction. If it did, there would apparently be no state court jurisdiction, and therefore no federal diversity jurisdiction. The District Court granted LaPlantes' motion.

Iowa Mutual appealed to the Ninth Circuit. In an unpublished September 24, 1985 opinion, a three judge panel affirmed the District Court's dismissal of Iowa Mutual's declaratory judgment proceeding. The circuit panel reaffirmed the validity of *R.J. Williams* on the diversity issue. According to the Court of Appeals, *R.J. Williams* stands for the proposition that the federal courts are "'divested of diversity jurisdiction whenever the dispute [involves] the exercise of the tribe's responsibility for self-government' but that jurisdiction is not divested 'when the tribe has not itself manifested an interest in adjudicating the dispute.'" (See Appendix, page 5a.) In the latter situation, the Court of Appeals contemplated the parties first obtaining a determination from the Tribal Court as to whether it would "assume" jurisdiction. The Court of Appeals left unanswered how any litigant such as Iowa Mutual, which has felt from the outset that the Tribal Court lacks jurisdiction over it and wants to avoid the tribal judicial system, is supposed to obtain such a determination from the Tribal Court.

Interestingly, the Court of Appeals felt that its reaffirmation of the *R.J. Williams'* doctrine was consistent with this Court's own very recent Indian jurisdiction decision, National Farmers Union Insurance Cos. vs. Crow Tribe of Indians, et al, 471 U.S. _____ , 85 L. Ed. 2d 818 (1985), even though the latter was a federal question case under 28 U.S.C. Sec. 1331. More particularly, *National Farmers* was a federal common law question case which has to be viewed, at least implicity, as permitting a greater expression of subjective judicial policy, simply in terms of defining the federal question itself. Conversely, the prerequisites for federal diversity jurisdiction under 28 U.S.C. Sec. 1332 (citizenship of the parties and amount in controversy) have to be viewed (regardless of the extensive litigation which they have spawned) as more objective.

More as a procedural matter, the Circuit Panel also noted that it was constrained by its own internal rules not to question the continuing validity of the *R.J. Williams* decision as the "controlling authority" in the Circuit. On that basis, Iowa Mutual sought a rehearing and suggested that the matter be reheard en banc by the entire Ninth Circuit. In making that request, Iowa Mutual noted not only the unanswered procedural questions which the Ninth Circuit's position raised, but also the fact that the *R.J. Williams* doctrine put the Ninth Circuit's position in conflict with that of the Eighth Circuit Court of Appeals, as expressed in Poitra vs. Desmarrias, 502 F. 2d 23 (1974), *cert. den.*, 421 U.S. 934 (1975). The Ninth Circuit declined Iowa Mutual's invitation to reexamine *R.J. Williams;* its petition for rehearing was denied on December 27, 1985.

REASONS FOR GRANTING THE WRIT

1. THE POSITIONS OF THE EIGHTH AND NINTH CIRCUITS REGARDING DIVERSITY JURISDICTION OVER RESERVATION INDIANS ARE SQUARELY IN CONFLICT.

As noted above, the Eighth Circuit Court of Appeals determined back in 1974 that federal diversity jurisdiction could be maintained in a lawsuit against a reservation Indian, even though the Courts of the state in which the federal tribunal sat would be precluded from hearing the case. Poitra vs. Desmarrias, *supra*. As Justice White noted in his dissent to the refusal to grant certiorari in *Poitra*, a clear conflict existed between the Eighth and Ninth Circuits then. *Id.*, 421 U.S. 934.

As *R.J. Williams* and this currently pending matter demonstrate, the conflict remains. This Court should resolve it now. This case presents an ideal opportunity, since it is uncomplicated by extraneous issues.

2. THIS COURT NEEDS TO FURTHER CLARIFY THE LIMITS OF TRIBAL COURT JURISDICTION

For the past 25 years, since Williams vs. Lee, 358 U.S. 217 (1959), this Court has itself devoted what many may view as a disproportionate amount of its limited resources to Indian law matters. The trend appears to have accelerated in recent years, rather than abate. Cf. National Farmers Union Ins. Cos. vs. Crow Tribe of Indians, et al., *supra*. A large measure of the problem can no doubt be traced to the development and strengthening of tribal institutions, such as tribal courts, coupled with an increase in relations, commercial and otherwise between reservation Indians and outsiders. See Oliphant vs. Suquamish Indian Tribe, 435 U.S. 191, 211-212 (1978). Increased litigation was inevitable.

While the relationship between reservation Indians and outsiders has traditionally been viewed as based upon statutes and treaties with the tribes themselves, the simple

fact remains that those treaties were negotiated at a time when the tribes were to a great extent aboriginal in makeup, and largely uninfluenced by European or "American" values. The legal framework within which the relationship between those Indian tribes and outsiders developed simply did not contemplate late twentieth century realities of sophisticated commercial and social relationships between reservation Indians and outsiders, nor the fact that many reservation Indians have either adopted or at least been influenced by the institutions and values of the larger non-Indian society within which they are located. Cf., Montana vs. United States, 450 U.S. 544 (1981). Congress has not acted to any great extent on the subject; it has been left to the federal judiciary, and particulary this Court, to develop a twentieth century legal framework.

It is an important task. While reservation Indians may be small in number, their reservations occupy vast tracts of lands, particularly in the western United States. It is naive to believe that the Indians who live on these reservations will occupy themselves in the manner contemplated when those reservations were established over 100 years ago — that is, maintaining an aboriginal life style, isolated from the rest of American society. Commercial and social interaction between reservation Indians and outsiders has increased. That increase can probably be rightly viewed as an inevitable outgrowth of the strengthening of tribal institutions, which will probably permit an increase in the type and sophistication of the dealings between reservation Indians and outsiders. This case is a good example. It does **not** involve fishing rights on streams flowing through reservation land (Montana vs. United States, *supra*) or a grocery bill incurred at a reservation "trading post" (Williams vs. Lee, *supra*). Rather, it involves tribal members who organized a ranch business and then travelled off the reservation to purchase a package of insurance policies written by an out-of-state insurance company.

To the extent underlying treaties and statutes permit, a recognizable framework ought to be developed for the reso-

lution of disputes arising from commercial and social relationships between reservation Indians and outsiders. Such an approach has to be viewed as beneficial to all concerned. Resolution of uncertainties would no doubt strengthen tribal institutions, since both tribal members and those who deal with them from the outside would be able to act with the confidence that comes from knowing the full extent of the authority of the tribal institutions.

Insofar as diversity jurisdiction is concerned, we appear to be moving in the opposite direction. Considerable uncertainty exists, particularly in the Ninth Circuit, as to what manner of disputes can be adjudicated in a federal court, and which are within the exclusive domain of tribal courts. The situation can be contrasted with the present state of affairs in the Eighth Circuit, where both reservation Indians and outsiders know that if federal diversity jurisdiction exists, their disputes can be resolved in a federal forum. Poitra vs. Desmarrias, *supra;* American Indian National Bank vs. Red Owl, 478 F.Supp. 302 (D.S.D. 1979). The same situation apparently obtains in the Tenth Circuit as well. See American Indian Agriculture Credit vs. Fredericks, 551 F.Supp. 1020 (D. Col. 1982). As Justice White recognized back in 1975, the situation calls for resolution by the Supreme Court. If anything, that need has increased in the subsequent 11 years.

3. THE NINTH CIRCUIT'S POSITION HAS DEVELOPED FROM A FAULTY PREMISE

According to the Ninth Circuit, its idea, that a federal district court cannot entertain, as a diversity action, a lawsuit against a reservation Indian which could not be heard in state court, developed from Woods vs. Interstate Realty, 337 U.S. 535 (1945). See Littell vs. Nakia, 344 F.2d 486 (9th Cir. 1965), *cert. den.*, 382 U.S. 986 (1966).

In *Woods*, this Court decided that a foreign corporation disqualified under Mississippi law from maintaining a lawsuit in Mississippi state courts could not maintain the same lawsuit as a diversity action in federal court. We have no

quarrel with *Woods*. There is a fundamental fairness about the result. A party should not be able to benefit by its evasion of state law, by having a federal forum nonetheless available to it. However, the critical feature of *Woods* was that it was a *state* law that prevented the party from utilizing that state's judicial system.

Woods should not properly be viewed as applying to an out-of-state litigant maintaining a federal diversity action against an in-state reservation Indian. Those state courts which cannot hear cases against reservation Indians have not been precluded from doing so by any state law, but rather be federal law. See Poitra vs. Desmarrias, *supra*; American Indian Agricultural Credit vs. Fredericks, *supra*; American Indian National Bank vs. Red Owl, *supra*. In *American Indian Agricultural Credit*,the Court aptly summarized the correct view:

> "The *Poitra* Court asserted that Indians enjoy their special immunity from state law only as a result of federal law. Therefore, federal jurisdiction would not impinge on state jurisdiction in contravention of *Erie*, where the state itself has not created an additional immunity for Indians on independent State policy grounds: 'The reason that (a state) lacks jurisdiction over this civil action is because of the special status given Indians by federal law, not because of any *state* policy consideration.' " *Id.* at pages 1021-1022.

As the Ninth Circuit itself took pains to note in *R.J. Williams*, the State of Montana has not declined on its own to adjudicate controversies involving Indians. R.J. Williams vs. Fort Belknap Housing Authority, *supra*, at p. 984. Federal law, much of it enunciated by either the Ninth Circuit or this very Court, has served to close the Montana state court system to actions against reservation Indians. Such federal action should not be viewed as having also closed the federal courthouse doors, based on the *Woods* case.

4. THE NINTH CIRCUIT'S POSITION REPRESENTS AN ABROGATION OF FEDERAL JUDICIAL RESPONSIBILITY

There is no question here that, apart from the LaPlantes and Wellmans' status as reservation Indians, diversity jurisdiction exists. The amount in controversy is well in excess of the $10,000.00 minimum, given simply the fact that LaPlantes' prayer for punitive damages against Iowa Mutual in the tribal court proceeding is for $5,000,000.00. The allegation that Iowa Mutual is a citizen of Iowa is uncontradicted. By federal law, the LaPlantes and Wellmans, as Indians, are also United States citizens. 8 U.S.C., Sec. 1401 (a) (2). As citizens they come within the scope of the 14th Amendment to the United States Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States *and of the State wherein they reside.*" (Emphasis added.)

Since the Blackfeet Indian Reservation is located in Montana, the LaPlantes and Wellmans are citizens of Montana.

All of the requisites which Congress has imposed in 28 U.S.C. Sec. 1332 are present. Conversely, Congress has engrafted no exception on to the diversity statute upon which the Ninth Circuit relies in declining to allow the exercise of that jurisdiction. The Ninth Circuit's "reservation Indian" exception to 28 U.S.C. Sec. 1332 appears to be an entirely judicial creation. We know of no authorization for such a judicial departure from Congress' clear expression of authorization for diversity actions. Cf., Williams vs. Green Bay and Western Railroad Co., 326 U.S. 549, 553-554 (1946).

The Ninth Circuit requires, according to *R.J. Williams*, that federal diversity jurisdiction depend upon a tribal court first determining whether it possesses jurisdiction over the matter. By deferring in such a fashion to a tribal court, the federal judiciary would be abrogating its responsibility to determine its own jurisdiction.

> "The diversity jurisdiction of Federal Court is even more a matter of significant federal interest because it is based on the grant of power contained in Article III, Sec. 2, of the Constitution. Its breadth must be determined at federal and not state level, and it is appropriate to bow to the state limitations only when they advance some proper state policy." Sun Sales Corp. vs. Block Island, Inc., 456 F 2d 857, 860 (3rd Cir. 1972)."

See also Mechanical Appliance Co. vs. Castleman, 215 U.S. 437, 443 (1910).

Such considerations have to be viewed as applying with equal force to tribal courts, no less than state courts. If federal diversity jurisdiction exists, it exists regardless of whether a tribal court or any other tribunal says it does or not. Federal diversity jurisdiction is a creature of federal law, to be construed under federal principles by federal courts. To the extent that the federal judiciary must defer to a tribal court to allow the latter to determine whether it should exclusively adjudicate a controversy means that the federal judiciary is abrogating its responsibilities.

In stating as much, Iowa Mutual is not suggesting that the federal judiciary usurp legitimate tribal court authority. We are simply suggesting that there are a range of disputes between tribal members and outsiders which can be adjudicated in a federal forum, if the requisites for federal jurisdiction are otherwise met. One is simply hardpressed to say that a dispute over the coverage of insurance policies issued by an insurance company that the Blackfeet Tribe has never sought to regulate in any fashion whatsoever so implicates tribal self government that a federal court must refrain from exercising its jurisdiction, Montana vs. United States, *supra*. In that regard, it cannot be overlooked that federal declaratory judgment actions have been repeatedly

viewed as appropriate devices for resolving insurance coverage disputes. See Maryland Casualty Co. vs. Pacific Coal and Oil Co., 312 U.S. 70 (1941); see also 10 A Wright and Miller, Federal Practice and Procedure, Sec. 2760.

Admittedly, diversity jurisdiction was — and remains — controversial. Its opponents have repeatedly cited its abolition as a remedy for clearing the overburdened dockets of federal courts. Yet the fact remains that Congress has refused to abolish it and we submit that its existence remains justified today, no less so than two centuries ago. As Professor Moore has noted:

> "Citizens of different states are also citizens of the United States and they ought to be able to litigate their controversies in the tribunal of the sovereign to which they both belong. This need is especially apparent when the parties are engaged in interstate transactions and when problems of conflicts of law are involved. There is little doubt that the development of commerce has been aided by the existence of diversity jurisdiction, and, consequently, its abolition, especially in regard to corporate usage, is not justified by experience." 1 Moore's Federal Practice, page 701.33.

As Iowa Mutual suggested above, the "development of commerce" with reservation Indians would be aided in just the same fashion as the development of commerce between citizens of different states was aided through the existence of diversity jurisdiction.

Moreover, Iowa Mutual is not at all ashamed to admit that the same concerns which have historically been viewed as being the genesis of diversity jurisdiction have prompted it to seek a federal forum for resolution of this insurance coverage dispute.

> "It is the generally accepted view that diversity jurisdiction was established to provide access to a competent and impartial tribunal, free

> from local prejudice or influence, for the determination of controversies between citizens of different states." 1 Moore's Federal Practice, page 701.20

See also Burgess vs. Seligman, 107 U.S. 20, 34 (1883).

Iowa Mutual has a very real fear of local prejudice, if it has to litigate the extent of any coverage it has to provide to individual Blackfeet Indians in a proceeding in their Tribal Court. Iowa Mutual Insurance Company is not a member of the Blackfeet Tribe; the individual Defendants apparently all are. According to Article I, Sec. 2 of the Blackfeet Tribal Code, all of the judges of the Court must also be members of the Blackfeet Tribe. (See Appendix, page 9). Furthermore, according to that same section of the code, the additional qualifications for being a Tribal Judge are extremely limited. One must have a high school education, be over 21 years of age and not be a convicted felon. More troubling, under Sec. 3 of Article I of the Tribal Code, judges serve at the pleasure of the Tribal Council. (See Appendix, page 9). It would appear that the Blackfeet Tribal Court system is particularly susceptible to local political influence. As an outsider, Iowa Mutual is not comfortable with that situation.

Proponents of the Ninth Circuit position may perhaps argue that allowance of federal diversity jurisdiction in actions involving reservation Indian defendants would not strengthen tribal institutions but rather weaken them. Such an argument has no merit. As a first point, insofar as diversity jurisdiction is concerned, no empirical data exist to support that point of view. Secondly, the same argument could have been made about the effect of federal diversity jurisdiction on state court systems. Once again, there is no evidence to suggest that this view has any merit. The existence of federal diversity jurisdiction has not had any adverse effect on state judicial systems. There is no reason to believe that it would have any adverse effect on tribal judicial systems either. Furthermore, the effect on any judicial system (be that effect positive, negative or neutral, and be

that system federal, state or tribal) is not the rationale behind federal diversity jurisdiction. Diversity jurisdiction was created for the sake of the parties themselves. See Moore, *supra*. Federal diversity jurisdiction was created to provide a neutral forum for resolution of controversies among citizens of the different states. A judicially created exception should not be sanctioned at the expense of any class of litigants.

5. THE NINTH CIRCUIT APPROACH JUST DOES NOT WORK

The Ninth Circuit feels that a tribal court should first decide whether it can hear a matter before a federal court should be permitted to determine the extent of its own diversity jurisdiction. Litigants such as Iowa Mutual have been told to file their diversity actions in tribal court, so that that court can first determine whether it has jurisdiction over the matter. Yet, Iowa Mutual filed a diversity action in federal court precisely for the reason that it wanted to avoid litigating in tribal court.

Quite obviously, the Indian defendants are not going to challenge the tribal court's jurisdiction. By filing its own declaratory judgment in tribal court, Iowa Mutual will have, in effect, voluntarily consented to the tribal court's jurisdiction over it. How can a plaintiff challenge the jurisdiction of a court in which it voluntarily files an action? We do not know. Thus, the Ninth Circuit has established a fundamentally impossible and impractical solution to the diversity jurisdiction problem which it perceives.

The solution to the "problem" which the Ninth Circuit has created is to announce that there is in fact no problem at all. The problem can be eliminated simply by approving the Eighth Circuit approach, which is not to recognize a "reservation Indian" exception to diversity jurisdiction under 28 U.S. C. Sec. 1332.

CONCLUSION

This case presents an important question concerning the nature and extent of federal diversity jurisdiction in actions involving reservation Indians. As matters now rest, a clear conflict exists betwen two Circuit Courts of Appeal on this precise subject. The position now taken by the Ninth Circuit Court of Appeals is, beyond being inconsistent with the Eighth Circuit, legally unsound in and of itself. Furthermore, it represents an abrogation of federal judicial responsibility and it is impractical.

Accordingly this Court should grant Petitioner's Request for a Writ of Certiorari to review this decision of the Ninth Circuit Court of Appeals in this case.

RESPECTFULLY SUBMITTED this 25th day of March, 1986.

Maxon R. Davis
Cure, Borer & Davis
P.O. Box 2103
Great Falls, Montana 59403

March 25, 1986

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

NO. CV-84-131-GF

IOWA MUTUAL INSURANCE COMPANY,
a corporation,

Plaintiff

vs.

EDWARD M. La PLANTE, VERLA LaPLANTE, et al.,

Defendants.

MEMORANDUM AND ORDER

The plaintiff, Iowa Mutual Insurance Company, invokes the diversity jurisdiction of this court and asks the court to declare its rights and liabilities under an insurance contract extant between the plaintiff and the defendants, Wellman Ranch Co., Robert Wellman, Jr., Ramona Wellman, Craig Wellman and Terry Wellman (collectively referred to as the "Wellmans").

The present controversy has its genesis in a traffic accident which occurred within the exterior boundaries of the Blackfeet Indian Reservation, in which Edward LaPlante, an employee of the Wellmans, was injured. LaPlante filed a personal injury suit against the Wellmans in the Blackfeet Tribal Court and an insurance bad faith action against Iowa Mutual centering on Iowa Mutual's investigation and settlement practices.

Noting that all of the named defendants are enrolled members of the Blackfeet Indian Tribe and that the accident at issue occurred on the Blackfeet Indian Reservation, the court must make an immediate inquiry into whether it has jurisdiction over this controversy. In so doing, the court finds that the decision reached by the Court of Appeals for this Circuit in *R.J Williams Co. vs. Fort Belknap Housing Authority*, 719 F. 2d 979 (9th Cir. 1983) to be dispositive of the jurisdictional issue presented. *R.J. Williams* clearly teaches that the assertion of diversity jurisdiction by this court, in the first instance, over a civil controversy arising on an Indian reservation is inappropriate. 719 F. 2d at 983-984. The Blackfeet Tribal Court must be afforded the opportunity to determine its jurisdiction in this matter. Only if the Blackfeet Tribe decides not to exercise its exclusive jurisdiction in this matter, would this court be free to entertain the same under 28 U.S.C. Sec. 1332. Therefore,

IT IS ORDERED that the present action be, and the same hereby is, DISMISSED.

DATED this 20th day of September, 1984.

PAUL G. HATFIELD
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CA NO. 84-4263
DC NO. CV-84-131-PGH

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff-Appellant,

vs.

EDWARD M. La PLANTE; VERLA LaPLANTE;
ROBERT WELLMAN, JR.; RAMONA WELLMAN;
CRAIG WELLMAN; TERRY WELLMAN; and
WELLMAN RANCH COMPANY, a
dissolved Montana corporation,
Defendants-Appellees.

MEMORANDUM

Appeal from the United States District Court
for the District of Montana
Paul G. Hatfield, District Judge, Presiding
Argued and submitted July 26, 1985, Seattle, Washington

Before: WALLACE, FARRIS, and HALL, Circuit Judges.

I. FACTS.

On May 3, 1982, Edward LaPlante was injured in a single vehicle truck accident on the Blackfeet Indian Reservation (the Reservation) in Montana. LaPlante was employed at the time of the accident by Wellman Ranch Company (the Ranch), which is located on the Reservation and is owned by Robert, Ramona, Craig, and Terry Wellman (the Wellmans). LaPlante and the Wellmans are Blackfeet Indians residing on the Reservation. LaPlante and his wife Verla (also a Blackfeet Indian) filed a tort action in the Blackfeet Tribal Court against the Ranch and the Wellmans alleging that LaPlante's accident occurred in the course of his employment and as a result of his employer's negligence. The LaPlantes also named Iowa Mutual Ins. Co. (Iowa Mutual), the insurance carrier for the Ranch and the Wellmans, and Iowa Mutual's adjustment agency, Mid-

land Claims Service, Inc. (Midland), as defendants alleging bad faith refusal to settle the LaPlante's claims.

Subsequent to the filing of the tribal court action, Iowa Mutual filed the present diversity action in federal district court against the LaPlantes, the Wellmans, and the Ranch. Iowa Mutual sought a declaratory judgment that it had no duty to indemnify or defend the Ranch or the Wellmans because the LaPlantes claims fell outside the relevant insurance policies. Midland filed a separate action (the Midland action) in federal district court (Iowa Mutual later intervened as a plaintiff). Midland sought a declaration that the tribal court had no jurisdiction over the LaPlantes bad faith claim and an injunction prohibiting the tribal court from proceeding further. The district court dismissed the Midland acton for failure to state a claim and the present action for lack of jurisdiction. The district court's decisions were appealed separately. The present appeal involves only Iowa Mutual's action.

II. ANALYSIS.

Iowa Mutual is an Iowa corporation with its principal place of business in Iowa. All of the defendants are Montana citizens. Although complete diversity exists, the district court dismissed for lack of jurisdiction to permit the Blackfeet Tribal Court to determine whether it would exercise jurisdiction over Iowa Mutual's claims. The court relied upon our recent decision in *R.J. Williams Co. vs. Fort Belknap Housing Authority*, 719 F. 2d 979 (9th Cir. 1983), *cert. denied*, 105 S. Ct. 3476 (1985). The district court's dismissal based upon lack of subject matter jurisdiction is reviewable *de novo. Redding Ford vs. California State Board of Equalization*, 722 F. 2d 496, 497 (9th Cir. 1983), *cert. denied*, 105 S. Ct. 84 (1984).

In *R.J. Williams*, a non-Indian contractor filed suit in federal court against a tribal housing authority which had seized some of the contractor's property pursuant to a tribal court writ of attachment. *R.J. Williams*, 719 F. 2d at 980-81. We initially observed that the contractor's action could

not have been brought in Montana state court because Montana had never assumed general jurisdiction over Indian tribes within its boundaries. *Id.* at 983 & n.3. We noted that where a state court is precluded from hearing a case, a federal district court should also be precluded from hearing the case because federal courts sitting in diversity operate as adjuncts to state courts. *Id. See Woods vs. Interstate Realty Co.*, 337 U.S. 535, 538 (1949).

We concluded in *R.J. Williams*, relying on our decision in *Littell vs. Nakai*, 344 F. 2d 486, 488-89 (9th Cir. 1965), *cert. denied*, 382 U.S. 986 (1966), that federal courts are "divested of diversity jurisdiction whenever the dispute [involves] the exercise of the tribe's responsibility for self-government" but that jurisdiction is not divested "when the tribe has not itself manifested an interest in adjudicating the dispute." *R.J. Williams*, 719 F. 2d at 983-84. Because we were unable to determine whether the tribal court had assumed jurisdiction, we reversed and remanded, holding that the determination of whether diversity jurisdiction existed would have to await the tribal court's decision on whether it would assume jurisdiction. *Id.* at 983 & 985.

R.J. Williams is in accord with *National Farmers Union Insurance Cos. vs. Crow Tribe of Indians*, 105 S. Ct. 2447, 2453-54 (1985), where the Supreme Court recognized that a tribal court may have jurisdiction over non-Indians involved in an accident on non-Indian land within a reservation. The court held that the existence of tribal court jurisdiction should be decided in the first instance by the tribal court itself. *Id.* at 2454.

Iowa Mutual admits that the district court properly applied *R.J. Williams* in this case but argues that *R.J. Williams* should be overruled. However, *R.J. Williams* is the controlling authority in our circuit absent the convening of an en banc court. *LeVick vs. Skaggs Cos.*, 701 F. 2d 777,778 (9th Cir. 1983).

At this stage of the litigation, we express no view as to the tribal court's jurisdiction over the personal injury, bad faith, and insurance contract interpretation issues. We

merely permit the tribal court to initially determine its own jurisdiction. The tribal court's determination can be reviewed later "with the benefit of [tribal court] expertise in such matters." *National Farmers*, 105 S. Ct. at 2454.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CA NO. 84-4263
DC NO. CV-84-131-PGH

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff-Appellant,
vs.
EDWARD M. La PLANTE; VERLA LaPLANTE;
ROBERT WELLMAN, JR.; RAMONA WELLMAN;
CRAIG WELLMAN; TERRY WELLMAN; and
WELLMAN RANCH COMPANY, a
dissolved Montana corporation,
Defendants-Appellees.

ORDER

Before: WALLACE, FARRIS, and HALL, Circuit Judges.

The panel has voted to deny the petition for rehearing and reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge requested a vote on it. (Fed. R. App. P. 35.)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

BLACKFEET TRIBAL CODE

CHAPTER 1

ADMINISTRATION OF LAW AND ORDER
(Tribal Court)

Sec. 1 **Jurisdiction.** (See clarification of this section in Preface.)

The Blackfeet Tribal Court shall have jurisdiction over all offenses enumerated in Chapter 5, when committed by any Indian as defined by this section, within the Blackfeet Indian Reservation.

With respect to any of the offenses enumerated in Chapter 5 over which federal or state courts may have lawful jurisdiction, the jurisdiction of the Court shall be concurrent and not exclusive. It shall be the duty of the said Court to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender. The Blackfeet Tribal Court is a court of "limited jurisdiction." This means that the Court can handle certain types of cases, but cannot handle other types. In order to know whether the Court can handle any particular criminal cases, it is necessary to first know *where* the offense took place, *who* is said to have committed the offense, and what offense is charged. *Where:* The Blackfeet Tribal Court has jurisdiction over matters arising on land within the exterior boundaries of the Blackfeet Indian Reservation. In addition to trust lands belonging to the Tribe or to individual Indians, this includes fee patented lands, townsites, roads and other right-of-ways, and tracts reserved for school, agencies or other governmental purposes. *Who:* The Blackfeet Tribal Court has jurisdiction over all persons of Indian descent who are members of the Blackfeet Tribe of Mon-

tana and over all other American Indians unless its authority is restricted by an order of the Secretary of the Interior. The Court does not have jurisdiction over non-Indians or over Indians from Canada. An Indian subject to the jurisdiction of the Blackfeet Tribal Court, including members of the Blackfeet Tribe, who also is employed in the Bureau of Indian Affairs has a right to appeal from any sentence of the Court to the Secretary of the Interior and the sentence if so appealed, does not become effective until approved by the Secretary.

What Crimes: The Federal courts have jurisdiction over the so-called "ten major crimes;" murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, larceny, and carnal knowledge; and the Federal offenses, such as counterfeiting, mail fraud, etc. As a practical matter, the Federal authorities sometimes turn over to Tribal authorities cases of aggravated assault or petty larceny.

The Blackfeet Tribal Court has exclusive jurisdiction over all crimes set forth in Chapter 5 of the Blackfeet Law and Order Code, which are committed by an Indian, as defined above, against another Indian within the Blackfeet Reservation. These crimes may not be tried in any court other than the Tribal Court. The Blackfeet Tribal Court has *concurrent* jurisdiction over all offenses within the Blackfeet Reservation, other than the ten major crimes, committed by an Indian against a non-Indian or an Indian from Canada. What "concurrent" means, very simply, is that the Federal Court and the Tribal Court both have power to try an offense by an Indian against a non-Indian. Specifically if the Federal authorities consent to take such a case prior to conviction in the Tribal Court, the Tribal Judge *must deliver* the accused to the Government for prosecution and all proceedings in the Tribal Court then stop. If the accused already has been punished in the Tribal Court on the other hand, the Federal authorities are prohibited from prosecuting him again.

Other Cases: A non-Indian who commits an offense against an Indian within the boundaries of the Blackfeet Reservation is punishable in Federal Court in accordance with either the general laws of the United States or State law, depending upon the circumstances. A non-Indian who commits a crime against another non-Indian is, of course, punishable in State Court. A member of the Blackfeet Tribe who commits a crime of any nature outside the Reservation is subject to the law of the jurisdiction in which the offense occurs.

Sec. 2 **Appointment of Judges.**

The Court shall consists of one or more judges, one of whom shall be designated as Chief Judge, and the others as associate judges. Each judge shall be appointed by the Tribal Business Council and Law and Order Committee with the approval of the Commissioner of Indian Affairs. Their salary may be fixed and paid by the Commissioner of Indian Affairs or by the Tribe. Each judge shall hold office for an indefinite period of time, unless sooner removed for cause or by reason of the abolition of said office. In the latter case, he shall be eligible for reappointment.

A person shall be eligible to appointment as judge of the Court only if he (1) is a member of the Blackfeet Tribe and (2) and has never been convicted of a felony, or within one year then past, of a misdemeanor. The age limit of judges shall not be less than 21 years of age. He must also have a high school education, and preferably be a commercial law student at the time of the original appointment.

Sec. 3 **Removal of Judges.**

After notice and hearing, any judge of the Court may be suspended, dismissed or removed by the Law and Order Committee and Tribal Business Council, with the approval of the Commissioner of Indian Affairs.

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that the foregoing Petition for a Writ of Certiorari of Iowa Mutual Insurance Co. was duly served upon the respective attorneys for each of the parties entitled to service by depositing three copies in the United States Mail, prepaid, addressed to each at the last known address as shown on this page on the 25th day of March, 1986.

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